

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JACOB WIEDENMANN,

Defendant.

CASE NO. CR19-5250 RJB

ORDER DENYING MOTION FOR  
COMPASSIONATE RELEASE

THIS MATTER comes before the Court on the above-referenced motion (Dkt. 67). The Court is familiar with the records and files herein and all documents filed in support of, and in opposition to, the motion. The Court is fully advised.

Defendant was convicted of drug and gun charges and sentenced to 80 months in prison and four years of supervised release. He has now served approximately 19 months with a current release date of March 15, 2025.

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THE LAW<sup>1</sup>

In pertinent part, 18 U.S.C. § 3582(c)(1) reads as follows:

(c) Modification of an imposed term of imprisonment.--The court may not modify a term of imprisonment once it has been imposed except that--

(1) in any case--

(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—

(i) extraordinary and compelling reasons warrant such a reduction; or

(ii) . . . .

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission[.]

The Policy Statement referenced by the statute is USSG § 1B1.13 was required by 28 U.S.C. § 944(f), which provides:

The Commission, in promulgating general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A) of title 18, shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples. Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.

In pertinent part, the policy statement at USSG § 1B1.13 provides:

Upon motion of the Director of the Bureau of Prisons under 18 U.S.C. § 3582(c)(1)(A), the court may reduce a term of imprisonment (and may impose a term of supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment) if, after considering the factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable, the court determines that--

(1) (A) Extraordinary and compelling reasons warrant the reduction; or . . .

(2) The defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g); and

(3) The reduction is consistent with this policy statement.

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<sup>1</sup> The sections herein on The Law and Discussion – Legal Issues are taken from this Court's Order Granting Motion for Compassionate Release (Dkt 209) in *United States v McPherson*, WDVA Cause Number CR94-5708RJB, and are equally applicable here.

## Commentary

### Application Notes:

1. **Extraordinary and Compelling Reasons.** – Provided the defendant meets the requirements of subdivision (2), extraordinary and compelling reasons exist under any of the circumstances set forth below:

(A) **Medical Condition of the Defendant –**

(i) The defendant is suffering from a terminal illness (i.e., a serious and advance illness with an end of life trajectory). A specific prognosis of life expectancy (i.e., a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic later sclerosis (ALS), end-stage organ disease, and advance dementia.

(ii) The defendant is –

- (I) suffering from a serious physical or medical condition,
- (II) suffering from a serious functional or cognitive impairment, or
- (III) experiencing deteriorating physical or mental health because of the aging process

that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

(B) **Age of the Defendant.**--The defendant is (i) at least 65 years old; (ii) is experiencing a serious deterioration in physical or mental health because of the aging process; and (iii) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.

(C) **Family Circumstances –**

(i) The death or incapacitation of the caregiver of the defendant's minor child or minor children.

(ii) The incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

(D) **Other Reasons.**—As determined by the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary and compelling reasons other than, or in combination with, the reasons described in subdivision (A) through (C).

2. **Foreseeability of Extraordinary and Compelling Reasons.**—For purposes of this policy statement, an extraordinary and compelling reason need not have been unforeseen at the time of sentencing in order to warrant a reduction in the term of imprisonment. Therefore, the fact that an extraordinary and compelling reason reasonably could have been known or anticipated by the sentencing court does not preclude consideration for a reduction under this policy statement.

3. **Rehabilitation of Defendant.**—Pursuant to 28 U.S.C. § 994(t), rehabilitation of the defendant is not, by itself, an extraordinary and compelling reason for purposes of this policy statement.



1 Third, these further observations support this conclusion: First, the listing of examples of  
2 extraordinary and compelling reasons in the Policy Statements § 1B113 and Application notes is  
3 not, by its language, exclusive. Second, the listing of things that are not considered  
4 extraordinary and compelling does not limit what else may be considered extraordinary and  
5 compelling. Third, Application Note 1(D) clearly opens the door to consider reasons other than  
6 the examples listed in determining whether extraordinary and compelling reasons for a sentence  
7 reduction exists.

8 “Extraordinary and compelling” means “extraordinary and compelling.”

#### 9 DISCUSSION – DEFENDANT’S CLAIMS

10 Defendant presents a myriad of physical issues, and the environment at FCI Sheridan  
11 regarding the pandemic, as extraordinary and compelling reasons for compassionate release.  
12 However, none of Defendant’s physical issues clearly are recognized as actual risk factors for  
13 COVID-19, particularly in light of the commentary to USSG § 1B.13 (Application Notes, 1(A)).  
14 Nor does the situation at FCI Sheridan provide extraordinary and compelling reasons.

15 Furthermore, the record is basically silent as to any support from the 18 U.S.C. § 3553(a)  
16 factors, and there is no evidentiary basis for the Court to find, as is required by 18 U.S.C. §  
17 3142(g), that defendant is not a danger to the safety of any other person or to the community.

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ORDER

For those reasons, it is now

ORDERED that Defendant's Motion for Compassionate Release (Dkt. 67) is DENIED.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 21<sup>st</sup> day of January, 2021.

A handwritten signature in black ink, reading "Robert J. Bryan", written over a horizontal line.

ROBERT J. BRYAN  
United States District Judge